* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Writ Petition (C) No. 4328 of 2001**

Ram Kishore .....Petitioner
Through Mr. R.K. Jha, Advocate

versus

Municipal Corporation of Delhi .....Respondent
Through Mr.Jyoti Shaulian, Advocate

**And**

\+ **Writ Petition (C) No. 6360 of 2002**

Mohd. Yasheen .....Petitioner
Through Mr. D.S.Chauhan
with Mr.K.D.Saini, Advocates

Versus

Lt. Governor & Ors. .....Respondents
Through Mr.Anil Sapra, Advocate

**And**

\+ **Writ Petition (C) Nos. 7390 and 7391 of 2005**

Bhagwan & Anr. .....Petitioners
Through Mr. S.K.Bhaduri, Advocate.

versus

Delhi Development Authority .....Respondent
Through Mr.Anil Sapra, Advocate

**Date of decision : 18.7.2007**

**CORAM:**
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**: Dr. S. Muralidhar, J.**

***Introduction***

1. The petitioners in these writ petitions are the parents of young children who died in tragic circumstances, not of their own creation. Ram Kishore, a vegetable vendor, has filed Writ Petition (C) No. 4328 of 2001 claiming compensation from the Municipal Corporation of Delhi ('MCD') for the death of his 11-year old son Mahesh studying in

Class IV on 13.5.2000. Mahesh died instantaneously when the wall of a municipal lavatory maintained by the MCD collapsed on him while he was easing himself. The second petition W.P. (C) No. 6360 of 2002 is by Mohd. Yasheen, a tailor, claiming compensation from the Delhi Development Authority (DDA) for the death on 5.5.2002 of his 15-year old son Beeru in the bathing facility at Sur Ghat on the banks of the river Yamuna maintained by the DDA. Beeru's body got entangled in an uncovered outlet drain pipe due to a sudden current of water and was ultimately found near the pipe's sluice valve nearly thirty feet away from the mouth of the pipe. The third and fourth petitions are by Bhagwan and his wife Smt. Rajwanti respectively, claiming compensation from the DDA for the death of their son Vineet Pawar aged 7 years who died on the spot on 13.11.2004 when a heavy iron grill gate at the entrance of a DDA park fell on him while he and his friends were entering it to play there. By this common judgment this Court holds the respective agencies liable for the deaths of the three young children and directs them to pay compensation to the petitioners.

2. In all these cases, a common feature is that the incident themselves are not denied. Each respondent has denied liability by contending that they were not responsible for causing the death of the victim and that there was no failure of any duty of care which might be termed as negligence on their part. However, each of the respondents has raised a preliminary objection to the maintainability of the writ petition on the ground that it raises disputed questions of fact.

***Maintainability of the writ petitions***

3. This Court proposes to first deal with the preliminary objection as to maintainability. The question of award of compensation under the constitutional jurisdiction of this Court under Article 226 of the Constitution has been considered in a large number of cases. Although the position in law is fairly well-settled, a brief reference will be made to some of the decisions of the Hon'ble Supreme Court and this Court.

4.1 The leading decision of the Hon'ble Supreme Court in recognizing the power of the Constitutional courts to award compensation against the state in public law is ***Rudul Shah v. State of Bihar*** (1983) 3 SCR 508. This was followed in ***Sebastian M. Hongray v. Union of India*** (1984) 1 SCR 904 and a large number of other cases. In ***Nilabati Behera v. State of Orissa*** (1993) 2 SCC 746, the Hon'ble Supreme Court delineated the principles on which compensation can be directed to be paid by the state or its agency in a writ petition under either Article 32 by the Supreme Court or Article 226 by a High Court, and explained it in the following words (SCC, p. 758):

> "It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in action on tort. **It may be mentioned straightway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign**

> **immunity does not apply, even though it may be available as a defence in private law in an action based on tort**. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings." (emphasis supplied)

4.2 Further, referring to the decision of the Privy Council in ***Maharaj vs. Attorney-General of Trinidad and Tobago (No.2)***, (1978) 2 All ER 670, the Hon'ble Supreme Court in ***Nilabati Behera*** observed as under (SCC p. 762):

> "It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, **is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental rights is 'distinct from, and in addition to, the remedy in private law for damages for the tort'** resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental rights is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the

Constitution. This is what was indicated in ***Rudul Sah*** and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

4.3 In the judgment, the rationale was further explicated as under (SCC p.768):

"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. **Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the**

> **public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law**." (emphasis supplied)

4.4 In ***Nilabati Behera***, it was explained that (SCC p.769) "Relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of fundamental rights of the citizen and no other form of appropriate redressal by the Court in the facts and circumstances of the case is possible." In the same case, it was further explained that (SCC p.764) "This remedy in public law has to be more readily available when invoked by the have nots who are not possessed of the wherewithal for enforcement of their rights in private law, even though this exercise is to be tempered by judicial restraint to avoid circumvention by private law remedy when more appropriate."

5. The above enunciation of law in ***Nilabati Behera*** which broke new ground in constitutional jurisprudence in the area of payment of compensation for public law wrongs, has thereafter been consistently applied and followed in large number of decisions, the leading among which is ***D.K. Basu v. Union of India*** (1997) 1 SCC 416.

6. The High Courts have, on their part, dealt with a large number of cases involving the claims for compensation brought in writ petitions under Article 226 of the Constitution. This Court has also awarded compensation in a large number of such cases. In ***Darshan v. Union of India*** 1999 (79) DLT 432, a Division Bench of this Court was dealing with a claim by the widow and minor children of one Skattar Singh, a bus driver, who had fallen into an open manhole and died of drowning. The plea taken in that case by the respondent that the writ petition was not maintainable since it involved disputed questions of fact, was rejected by reference to both ***Nilabati Behara*** and ***D.K. Basu***. On the facts of the said case, it was held that it was a case of *res ipsa loquitur*, and therefore compensation could be awarded under Article 226. The writ petition was held to be maintainable.

7. The other decisions of this Court awarding compensation in the writ jurisdiction include ***Raj Kumar v. Union of India*** (2005) 125 DLT 653 which has been upheld in ***Delhi Jal Board v. Raj Kumar*** (2005) 8 AD (Delhi) 533, ***Chitra Chary v. DDA*** (2005) 1 AD (Del) 29, ***Shri Chand v. Chief Secretary*** 2004 (112) DLT 37, ***Shobha vs. GNCTD*** (2003) IV AD (Delhi) 492, ***Shyama Devi vs. GNCTD*** (1999) 1 AD (Cr) Delhi 549, ***All India Lawyers' Union (Delhi Unit) vs. Union of India*** AIR 1999 Del 120 and ***B.L. Wali vs. Union of India*** (2004) VIII AD (Delhi) 341.

8. In light of the aforementioned decisions, the preliminary objection as to maintainability of the petitions is rejected.

***Res Ipsa loquitur and Strict liability***

9. The next question that arises for consideration is the principle that should be applied in determining the existence and extent of liability of the respondent and consequent fastening of liability on it. It requires to be recapitulated that in terms of the ruling in ***Nilabati Behera,*** claim for compensation for constitutional torts in the form of a writ petition (SCC, p.762) "is an acknowledged remedy for enforcement and protection of such rights, and such a claim **based on strict liability** made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right." This is necessary in order to find that there was a breach of a public duty to act fairly as a part of enforcement of the public law function of the state agency. It was explained in ***D.K. Basu*** that the claim of the citizen for compensation for constitutional wrongs is "based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which will have the right to be indemnified by the wrongdoer."

10. In the cases involving a claim for compensation in writ petitions either under Article 32 or Article 226, the courts have in response to the defence raised by the respondent that the petitions involve disputed questions of fact fastened liability either by ordering an independent enquiry into the facts (for e.g. ***Nilabati Behera***) or where there is no dispute as to the incident itself invoked the principle of *res ipsa loquitur*, thus obviating a need for any further inquiry into the facts.

11.1 Among the early cases which arose before the Hon'ble Supreme Court on similar facts where the principle was invoked was ***Municipal Corpn. of Delhi v. Subhagwanti*** AIR 1966 SC 1750. The facts of that case were that three suits for damages were filed by the heirs of three persons, namely, Shri Ram Parkash, Shrimati Panni Devi and Sant Gopi Chand who died as a result of the collapse of the Clock Tower situated opposite the Town Hall in the main Bazar of Chandini Chowk, Delhi belonging to the appellant Corporation. The question that was addressed was formulated thus: "Whether the appellant was negligent in looking after and maintaining the Clock Tower and was liable to pay damages for the death of the persons resulting from its fall." The contention and the response of the Court were as under (AIR, p. 1752):

> "It was contended, in the first place, by Mr Bishen Narain on behalf of the appellant that the High Court was wrong in applying the doctrine of res ipsa loquitur to this case. It was argued that the fall of the Clock Tower was due to an inevitable accident which could not have been prevented by the exercise of reasonable care or caution. It was also submitted that there was nothing in the appearance of the Clock Tower which should have put the appellant on notice with regard to the probability of danger. We are unable to accept the argument of the appellant as correct. It is true that the normal rule is that it is for the plaintiff to prove negligence and not for the defendant to disprove it. But there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part. The principle has been clearly stated in *Halsbury's Laws of England* 2nd Edn., Vol. 23, at p. 671 as follows:

> "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part."

In our opinion, the doctrine of *res ipsa loquitur* applies in the circumstances of the present case."

11.2 The Court next proceeded to consider "the main question involved in this case namely, whether the appellant, as owner of the Clock Tower abutting on the highway, is bound to maintain it in proper state of repairs so as not to cause any injury to any member of the public using the highway and whether the appellant is liable whether the defect is patent or latent."

And it held (AIR, p. 1753):

> "The finding of the High Court is that there is no evidence worth the name to show that any such inspections were carried out on behalf of the appellant and, in fact, if any inspections were carried out, they were of casual and perfunctory nature. The legal position is that there is a special obligation on the owner of adjoining premises for the safety of the structures which he keeps besides the highway. If these structures fall into disrepair so as to be of potential danger to the passers-by or to be a nuisance, the owner is liable to anyone using the highway who is injured by reason of the disrepair. In such a case it is no defence for the owner to prove that he neither knew nor ought to have known of the danger. In other words, **the owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect**."

11.3 Ultimately, it was held (AIR, p. 1753):

> "Applying the principle to the present case it is manifest that the appellant is guilty of negligence because of the potential danger of the Clock Tower maintained by it having not been subjected to a careful and systematic inspection which it was the duty of the appellant to carry out."

12. This was later followed in ***Sham Sunder v. State of Rajasthan*** (1974) 1 SCC 690 where it was held as under (SCC, p. 693):

> "The principal function of the maxim is to prevent injustice, which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant."
>
> "The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendant, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability."

13. This Court in ***Darshan vs. Union of India*** observed (DLT, p.437):

> "Compensation had also been awarded by this Court as well as by the Apex Court in writ jurisdiction in several cases of custodial deaths. Coming to instant case, it is one of *res ipsa loquitur*, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the record in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh.

> It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, **based on strict liability for breach of fundamental rights**."

14. In ***Dharamvir Kataria vs. Union of India*** (1999) 79 DLT 683, a learned Single Judge of this Court explained the rationale for awarding compensation on the basis of the strict liability. The Court was dealing with the claim of compensation consequent upon death of an employee of National Institute of Health and Family Welfare who was traveling in a lift in the building of the residential campus and was later found dead in the pit of the lift. While awarding compensation, this Court observed as under (DLT, p. 696):

> "Thus, **claim in public law for compensation for deprivation of constitutionally guaranteed right to life and liberty is a claim based on strict liability**. Such a claim can be entertained in a writ petition. It is a remedy in addition to the remedy available in private law for damages for tortious acts of the State or its functionaries or public servants. Exercise of power by the High Court under Article 226 of the Constitution for grant of compensation for the violation of indefeasible and inalienable right of a person guaranteed under Article 21 is an exercise of the power of the Court under the public law jurisdiction for

compelling the violator to make reparation of the wrong done."

15. In view of the above settled position in law, there can be no question that in its writ jurisdiction under Article 226 this Court can grant the relief of compensation based on the strict liability principle in a situation where there is a breach of a public duty. On the given facts of a case, liability would lie with the state if the claimant is able to show that the state acted negligently or that the "State or its instrumentality failed to discharge the duty of care cast upon it, resulting in deprivation of life or limb of a person." In discharging the burden of proving negligence it would be open to the claimant, if the facts and circumstances so permit, to invoke the *res ipsa loquitur* doctrine.

***The present cases: Ram Kishore's petition***

16.1 Turning to the cases on hand, in the facts leading to the filing of the first petition by Ram Kishore, his son Mahesh aged 11 years had gone to the municipal lavatory maintained by the MCD at around 8 pm when two other children aged nine and seven years were also using the public facility. The wall suddenly collapsed on them. While Mahesh died on the spot after being buried under the debris the other two were admitted to the Jagjivan Ram Hospital, Jahangirpuri, Delhi in a critical condition. The petitioner Ram Kishore, the father of the deceased Mahesh, is a vegetable seller. He has claimed Rs. 10 lakhs from the MCD as compensation for the death of Mahesh.

16.2 Despite several opportunities, no counter affidavit was filed by the MCD. A last opportunity was granted on 5.3.2007 and yet no affidavit was filed. After judgment was reserved on 24.5.2007 an

affidavit has been filed by the MCD on 31.5.2007 raising a preliminary objection to the maintainability of the writ petition on the ground that it involved disputed questions of fact which would require trial before the civil court. It is contended that the lavatory in question was constructed by the DDA and was handed over to the MCD in 1988. It is accordingly contended that any defect in the construction material is to be attributed to the DDA. Lastly, it is contended that if as averred in the writ petition, the writ petitioner had represented to various authorities including the Hon'ble Chief Minister of Delhi for payment of compensation, then the question would arise as to why the MCD alone should be responsible for payment of compensation.

16.3 There can be no manner of doubt that the municipal lavatory was being managed by the MCD. There is no denial of the fact that the wall of the municipal lavatory fell on the young victim Mahesh and that he had died instantaneously. The only defence is that the said lavatory had been constructed in 1988 by the DDA. It is not denied that the lavatory had been handed over to the MCD by the time the incident took place in the year 2000. Therefore, it was the MCD who was responsible for the up-keep of the lavatory.

16.4 The MCD's duty of care also partakes a statutory character. In terms of Section 359 (1) of the Delhi Municipal Corporation Act, 1957 ('DMC Act') which states that the Commissioner, MCD "shall provide and maintain in proper and convenient places a sufficient number of public latrines and urinals." Section 359 (2) DMC Act further mandates that such public latrines and urinals "shall regularly be cleansed and kept in proper order." It is therefore statutorily mandated that MCD is required to provide usable and safe lavatories

and to carry out periodic inspections to ensure that the public lavatories meet the minimum standard in terms of care and safety. Therefore, the MCD cannot avoid liability by merely stating that it had not constructed the lavatory. Even assuming that the MCD can take this defence, it can at the highest in terms of the judgment in ***D.K. Basu*** claim to be compensated by the DDA in separate proceedings.

16.5. Given the nature of the use of the public space and the purpose for which it is expected to be used, the strict liability principle would be attracted and the MCD would be statutorily liable for the up-keep of the public lavatory so that it does not endanger the life and safety of its users. The decision of the Hon'ble Supreme Court in ***Subhagwanti*** also reinforces this conclusion. Therefore, this Court finds that for the death of the victim 11 year-old Mahesh, the MCD is liable to compensate the family. There are no disputed questions of fact in the case to deter the Court from arriving at this conclusion.

16.6. For all of the above reasons, this Court finds that the MCD is liable in law to compensate the petitioners for the death of the victim resulting from the respondent MCD's failure to discharge its statutory and constitutional duties. The quantum of compensation will be discussed separately.

***Mohd. Yasheen's petition***

17.1 In the second petition, i.e. Writ Petition (C) No. 6360 of 2002, the petitioner Mohd.Yasheen's son Beeru aged 15 years died on 5.5.2002 as a result of his body getting entangled in the outlet drain pipe of Sur Ghat on river Yamuna at Wazirabad. Beeru had gone to the said Ghat with his friends for a dip. The deceased bought an entry ticket of

Rs.5/- for entering the Sur Ghat which admittedly is being maintained by the DDA. The floor of the Ghat was very slippery owing to poor maintenance. It is contended that the outlet drainpipe of 24" diameter, which was concealed, was opened without any warning. The drain pipe had no netting (or *jali*) to cover it. Resultantly, the strong current of water pushed the petitioner's son Beeru towards the open drain pipe and his body got thrust into and entangled in the drain pipe. It reached the sluice valve near the river thirty feet below the mouth of the outlet drain pipe. The staff of the DDA Respondent No.3, which was entrusted with maintenance of the premises did not take precautionary measures to prevent the mishap and also did not take immediate action to rescue the boy.

17.2 The stand of the DDA in its reply is that one Retd. Lt. Col. Dharmpal had been appointed as the Administrator of the Sur Ghat to look after the operations and maintenance and he is available throughout the day during the office hours at the Ghat. At the time of incident M/s. Jai Electronics had been engaged for providing watch and supervision. Further the incident took place on Sunday at 2.00 pm when the DDA officials were on their weekly off. DDA states that they have issued a "Show cause notice" to the agency and that a number of display boards have been put up conveying the message that any person taking a dip is doing so at his/her own risk and the DDA shall not be responsible for the same. DDA states that no one is responsible for this unfortunate incident and also during the investigations by the Police the officials of DDA have not been found at fault.

17.3 In its additional affidavit DDA denies the contention of the petitioner that the cries of help by the friends were not responded to

by the staff as approximately 150-160 persons are present at the ghat at all working hours on a Sunday.

17.4 In this case, this Court had, by its order dated 13.1.2005, directed the SDM, Model Town to finalize the inquest report under Section 174 Cr.PC and place it on record. Unfortunately even on 8.2.2006 the Court was informed that the inquest proceedings are still on. It was only thereafter that the SDM made a visit to the site in respect of an incident that had taken place nearly four years earlier. At the time of the visit, only the officials were present and the entire report shows that the SDM was only given the version of the officials. The inquest report returned the following findings:

> "No direct water is supplied by DJB, Wazirabad Water Works to the water tank of Sur Ghat. It is only through Chandrawal Water Works tank and that too through a controlled inlet valve, hence no possibility of a strong sudden water current in Sur Ghat on account of any action of DJB.
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> The water is maintained at 3 feet level through inlet valve of 11" to 12" diameter and through outlet valve of 10" diameter. No sign of any strong current wave is observed in the above condition. Besides, **if outlet valve is closed** and inlet is kept filling the tank, even then **there is no possibility of any sudden rising of water level or occurrence of any sudden water current which can push anybody to the drain pipe** in this condition or vice versa.
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> As regards the 24" diameter of drain pipe and non-existence of net or jali at its mouth at the time of incidence, though at present the diameter of drain pipe is 10" having an iron jali affixed at its mouth, nothing could be said about the existence of jali at that time. **However, it can be easily presumed that the net/ jali was not in place, though might be fixed earlier. The existence of jali in place might have prevented the entanglement of the body in the drain pipe**.
>
> Though police found no foul play in the death of Shri Beeru, **it is true that the body of Shri Beeru was found entangled in the drain pipe**.

> As per postmortem report and CFSL analysis report the cause of death is asphyxia consequent to ante-mortem drowning."

17.5. The above findings show, therefore, that the basic precaution of fixing a net in place and preventing any person from getting entangled in the drain pipe was not taken. If the outlet pipe had been closed then the sudden pull of the current of the water would have been avoided. Clearly, while reconstructing the events four years later, the SDM could only at best speculate whether the outlet pipe was open or not. However, the simple fact that the body was found well inside the outlet pipe, thirty feet from its mouth and near the sluice valve and that the pipe had to be cut open to extricate the body is enough by itself to show that the outlet valve was indeed open. The report of the SDM leads to the irresistible conclusion that in the facts and circumstances of the case the *res ipsa loquitur* principle would apply. Here again, in the view of this Court, the strict liability principle gets attracted.

17.6 Given the nature of the use of the place, which is for persons belonging to the general public bathing in the Yamuna at the Sur Ghat, given the fact that they had to buy a ticket to be permitted entry, there was an extra duty of care on the respondent-DDA to ensure that the safety of the persons using the Sur Ghat was not compromised on any account. The possibility of a person drowning as a result of entanglement in a drain pipe of the above dimensions was clearly foreseeable and reasonable precaution ought to have been taken by the DDA.

17.7 The plea taken by the DDA that the work of maintenance had been contracted out to a private firm and the watch and ward staff

were to be provided by the said firm stands belied by the petitioner's affidavit, which is not denied by the DDA, pointing out that the contract in question had already expired on the date of the incident i.e. 5.5.2002. Therefore on the date of the incident the responsibility for the safety and upkeep of the bathing ghat in question was squarely on the DDA itself.

17.8 For all of the above reasons, this Court finds that the DDA is liable in law to compensate the petitioners for the death of the victim resulting from the respondent DDA's failure to discharge its statutory and public law duties. Here again the quantum of compensation to be awarded will be discussed later.

***Bhagwan and Rajwanti's petition***

18.1 In the third and fourth writ petitions i.e., W.P. (C) Nos. 7390 and 7391 of 2005, the petitioners are the parents of deceased Vineet Pawar aged 7 years studying in Class II, who died on 13.11.2004 when a heavy iron gate at a park maintained by the DDA fell on him. The claim for compensation is in the sum of Rs. 20 lakhs.

18.2. The child was entering the park with his friends at around 6 pm and as they reached the gate, the heavy grill iron gate fell on his body and Vineet died on the spot. The post-mortem report has confirmed this.

18.3 The respondent DDA did not deny the incident. A plea has been taken that the residents of village Shahpur Jat were unhappy with the installation of the iron gate since their passage was blocked. The DDA claims to have made an enquiry which revealed that villagers had

tried to break down the gate and had vigorously shaken it. However, since the gate was strong, it could not be pulled down. In the process, the gate became inherently weak, although no damage was visible. This according to the DDA might have resulted in the gate falling on the child. The DDA has also filed a structure stability report of the gate.

18.4 Here the Court finds that the *res ipsa loquitur* principle would straightway be applicable. The latent defect defence was rejected long ago by the Hon'ble Supreme Court in similar facts and circumstances in ***Subhagwanti***. The DDA admittedly did nothing to ensure that the gate was in a safe condition. Given that this was a public park which was likely to be frequented by children, the risk entailed by an unsafe iron grill gate was foreseeable. Even according to the DDA it had reason to believe that there was some resentment among the local residents about the installation of the gate and that they were attempting to pulling it down. The DDA did not take the minimum care and precaution to prevent the risk and danger to young children whose entry into the park was not forbidden. Given the effect and degree of impact that a heavy iron gate would have on a child, the DDA owed children generally a greater degree of care. A young child could not have anticipated that the structure had so weakened that the gate would fall on him. Clearly, the DDA failed in its statutory duty to provide the minimum reasonable care to ensure that the heavy iron gate at a public path was in a safe condition and would not injure or cause a threat or risk to the life of passers-by or of those visiting the park. The DDA was negligent in not preventing the death of the seven year-old victim, Vineet. This is another case which would, in the view

of this Court, attract the strict liability principle and fasten the liability for compensating the death of the victim on the DDA.

18.5 For all of the above reasons, this Court finds that the DDA is liable in law to compensate the petitioners for the death of the victim, the 7year old Vineet, resulting from the respondent DDA's failure to discharge its statutory and constitutional duties.

***Computation of compensation***

19. The consequential issue that requires to be considered is the quantum of compensation that is required to be paid in each of the cases. The general approach adopted by our Courts is to determine the possible loss of earning of the victim and arrive at a figure by using the formula under the Motor Vehicles Act, 1988 (MVA). Prior to the MVA, 1988, the law governing the determination of compensation was based on the common law principle as explained in some detail by the Andhra Pradesh High Court in ***Andhra Pradesh State Road Transport Corporation v. G.Ramanaiah*** 1988 ACJ 223 (AP). The Court there indicated the possible approach to be adopted by the Court in the event of the victim being, inter alia, a child between ten and eighteen years, a child between five and ten years and a child below five years. The use of the table in Schedule II of the MVA 1988, i.e. determining the multiplicand and applying the appropriate multiplier, was explained by the Hon'ble Supreme Court in ***General Manager, Kerala SRTC v. Susamma Thomas*** (1994) 2 SCC 176. The Court explained the concept of the conventional sum of compensation to be awarded as well as the pecuniary loss.

20. In this Court, the issue has been discussed in some detail by Justice Bader Durrez Ahmed in ***Kamala Devi v. Govt. of NCT of Delhi*** 2004 (76) DRJ. The learned Judge has determined that a two-tier compensation, i.e. conventional sum and pecuniary compensation, ought to be awarded in such cases. After referring to the judgment of the Hon'ble Supreme Court in ***Mrs. Sudha Rasheed v. Union of India***, 1995(I) SCALE 77, it was held in ***Kamla Devi*** as under:

> "5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:-
> (a) 'standard compensation' or the so-called 'conventional amount' (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and
> (b) Compensation for pecuniary loss of dependency.
>
> 6. The 'standard compensation' or the 'conventional amount has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs. 97,700/-. This needs to be updated for subsequent years ;on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.
>
> 7. Compensation of pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken there from. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units-2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of

each adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the worked out a pattern, and they keep it in line with the changes in the value of money."

The above decision has been reiterated in two recent judgments of Justice Bader Durrez Ahmed in ***Ashok Sharma v. Union of India*** [decision dated 2.7.2007 in W.P.(C) No. 1039/1999] and ***Shri Kishan Lal v. Govt. of NCT of Delhi*** [decision dated 3.7.2007 in W.P.(C) No. 5072-73/2005]. Applying the above principles laid down in the above decisions, this Court proceeds to determine the compensation payable in each of the cases.

***Compensation in Ram Kishore's petition***

21. The base amount is taken as Rs. 50,000 in 1989 as explained in ***Kamla Devi***. The said sum would require to be adjusted for May 2000, the month during which Mahesh's death occurred, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India. With the base year 1982(=100), the average CPI (IW) for the year 1989 was 171 and for May 2000 it was 440. Hence, the inflation-corrected value works out to Rs. 1,28,654.97 (corrected to Rs. 1,28,655) [50,000 x 440 / 171] in

May 2000. So, in this case the standard compensation would be Rs. 1,28,655.

22. As regards pecuniary compensation, as explained in ***Kamla Devi*** the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. Unfortunately, in this case, the petitioners have not provided any precise figure. It is only stated that the petitioner is a vegetable seller. In such a situation, to minimize the element of guess work, it would be appropriate if the minimum wages are taken as a basis for determining the expected income. The minimum wages multiplied by a factor of 1.5 would enable arriving at a reasonable estimate of income. The minimum wages for skilled workers notified by the Office of the Labour Commissioner, Government of NCT of Delhi for the year 2000 was Rs. 2843 per month. If the same is multiplied by a factor of 1.5, it comes to Rs. 4265 per month. As per the ratio in ***Kamla Devi***, it must be presumed that half of the estimated income would be spent on the victim himself and the remaining given to the parents. Accordingly, the figure of Rs. 4265/- ought to be divided by 2 to provide a monthly figure of Rs. 2133/- and an annual figure of Rs. 25,596/-. This is the multiplicand in the present case. Multiplying it by 15 as per the Second Schedule to the MVA 1988 gives a figure of Rs. 3,83,940 which would constitute the pecuniary compensation payable by the respondent.

23. Consequently, the total compensation payable by the respondent to the petitioner is computed at Rs. 1,28,655 + Rs. 3,83,940 = Rs. 5,12,595/-. The said sum will be paid by the respondent MCD to the petitioner together with 6% simple interest per annum from 13.5.2000

till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

***Compensation in Mohd. Yasheen's petition***

24. The base amount is taken as Rs. 50,000 in 1989 as explained in ***Kamla Devi***. The said sum would require to be adjusted for May 2002, the month during which Beeru's death occurred, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India. With the base year 1982(=100), the average CPI (IW) for the year 1989 was 171 and for May 2002 was 472. Hence, the inflation-corrected value works out to Rs. 1,38,011.69 (corrected to Rs. 1,38,012) [50,000 x 472 / 171] in May 2002. So, in this case the standard compensation would be Rs.1,38,012.

25. As regards pecuniary compensation, as explained in ***Kamla Devi*** the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. Unfortunately, in this case, the petitioners have not provided any precise figure. It is only stated that the petitioner is a tailor. In such a situation, to minimize the element of guess work, it would be appropriate if the minimum wages are taken a basis for determining the expected income. The minimum wages multiplied by a factor of 1.5 would enable arriving at a reasonable estimate of income. The minimum wages for skilled workers notified by the Office of the Labour Commissioner, Government of NCT of Delhi for the year 2002 was Rs.3091.40 per month. Since this is the bare minimum expected income, it would have to be adjusted for arriving at a reasonable expected income. Accordingly, if the same is multiplied by a factor of

1.5, it comes to Rs. 4637 per month. As per the ratio in ***Kamla Devi***, it must be presumed that half of the estimated income would be spent on the victim himself and the remaining given to the parents. Accordingly, the figure of Rs. 4637/- ought to be divided by 2 to provide a monthly figure of Rs. 2319/- and an annual figure of Rs. 27,823/-. This is the multiplicand in the present case and the same needs to be multiplied by a multiplier of 16 as per the Second Schedule to the MVA 1988 (since Beeru had completed the age of 15 years on the date of incident) to give a figure of Rs. 4,45,162 which would constitute the pecuniary compensation payable by the respondent.

26. Consequently, the total compensation payable by the respondent DDA to the petitioner is computed at Rs. 1,38,012 + Rs. 4,45,162 = Rs. 5,83,174 /-. The said sum will be paid by the respondent DDA to the petitioner together with 6% simple interest per annum from 5.5.2002 till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

***Compensation in the petitions of Bhagwan and Rajwanti***

27. The base amount is taken as Rs. 50,000 in 1989 as explained in ***Kamla Devi***. The said sum would require to be adjusted for November 2004, the month during which Vineet's death occurred, based on the Consumer Price Index for Industrial Workers (CPI-IW), published by the Labour Bureau, Government of India. With the base year 1982 (=100), the average CPI (IW) for the year November 2004 was 525. Hence, the inflation-corrected value works out to Rs. 1,53,508.77 (corrected to Rs. 1,53,509) [50,000 x 525/171] in

November 2004. So, in this case the standard compensation would be Rs. 1,53,509.

28. As regards pecuniary compensation, as explained in ***Kamla Devi*** the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency entails the examination of Vineet's potential earning capacity had he lived to adulthood. According to the petitioners, Vineet's father, was doing a business of transport and having annual income approximately Rs. 1,50,000/-. It can safely be assumed that Vineet as an adult would have earned at least as much as his father, if not more. Therefore, the multiplicand would be the expected annual income less what he required for himself. Since, this expected income would only arise when Vineet grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. The contribution to the household would not exceed half of his income. Thus, the multiplicand would work out to Rs. 75,000 (1,50,000/2). This multiplicand is to be multiplied by the multiplier of 15 in terms of the Second Schedule to the MVA 1988. This gives a figure of Rs. 11,25,000.

29. Based on the above calculation, the total compensation payable by the respondent DDA to the petitioners works out to Rs. 1,53,509 + Rs. 11,25,000=Rs.12,78,509. The said sum will be paid by the respondent DDA to the petitioners together with 6% simple interest per annum from 13.11.2004 till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

***Conclusions and directions***

30. W.P. (C) No. 4328 of 2001 is allowed with the following directions:

(i) MCD is liable in law to compensate the petitioners for the death of the victim, the 11 year-old Mahesh, resulting from the respondent MCD's failure to discharge its statutory and constitutional duties.

(ii) The total compensation payable to the petitioner, computed at Rs. 5,12,595, will be paid by the respondent MCD to the petitioner together with 6% simple interest per annum from 13.5.2000 till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

(iii) The respondent will pay to the petitioner costs of this petition quantified at Rs.5,000 on or before 17.8.2007.

31. W.P. (C) No.6360 of 2002 is allowed is disposed of with the following directions:

(i) DDA is liable in law to compensate the petitioners for the death of the victim, the 15 year-old Beeru, resulting from the respondent DDA's failure to discharge its statutory and constitutional duties.

(ii) The total compensation payable to the petitioner, computed at Rs. 5,83,174, will be paid by the respondent DDA to the petitioner together with 6% simple interest per annum from 5.5.2002 till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

(iii) The respondent will pay to the petitioner costs of this petition quantified at Rs.5,000 on or before 17.8.2007.

32. W.P. (C) Nos.7390 and 7391 of 2005 are allowed with the following directions:

(i) DDA is liable in law to compensate the petitioners for the death of the victim, the 7 year-old Vineet, resulting from the respondent DDA's failure to discharge its statutory and constitutional duties.

(ii) The total compensation payable to the petitioner, computed at Rs. 12,78,509, will be paid by the respondent DDA to the petitioner together with 6% simple interest per annum from 13.11.2004 till the date of payment which in any event will not be later than four weeks from today, i.e. not later than 17.8.2007.

(iii) The respondent will pay to the petitioner costs of this petition quantified at Rs.5,000 on or before 17.8.2007.

(iv) The above sums will be paid in equal half to each of the petitioners.

S. MURALIDHAR, J.

JULY 18, 2007
raj/dn